

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ANTHONY L. MORENO,
Plaintiff,
v.
JOSHUA PEFFLEY, et al.,
Defendants.

Case No. [22-cv-04520-VKD](#)

**ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL PLAINTIFF'S
DISCOVERY RESPONSES**

Re: Dkt. No. 20

Pro se plaintiff Anthony Moreno, a state prisoner, filed this civil rights action against employees at the Correctional Training Facility ("CTF"), where he is currently incarcerated. The Court screened the amended complaint (Dkt. No. 6) and found it stated cognizable claims for the violation of his right to due process and equal protection as well as a related state law claim. Dkt. No. 7. The Court ordered the complaint to served on defendants L. Mendez, D. Naranjo, and Joshua Peffley, who were directed to file a motion for summary judgment or other dispositive motion. *Id.* Currently, defendants' dispositive motion is due by April 1, 2024. Dkt. No. 19.

On February 5, 2024, defendants filed a motion to compel Mr. Moreno's discovery responses pursuant to Federal Rule of Civil Procedure 37. Dkt. No. 20. To date, Mr. Moreno has filed no response to this motion. For the reasons discussed below, the motion is granted.

I. DISCUSSION

In support of their motion, defendants rely on the declaration of counsel, Deputy Attorney General Alexander G. Vicas, and Exhibits A-E to that declaration. *See* Dkt. No. 20-1. Mr. Vicas states that on October 27, 2023, he served Mr. Moreno with interrogatories, requests for production of documents, and requests for admission. *Id.* ¶ 3, Exs. A-C. The deadline for Mr.

1 Moreno's responses was November 29, 2023, which was the day before Mr. Moreno's deposition.
2 *Id.* ¶ 4 Mr. Vicas states that Mr. Moreno did not send any response before that date nor did he
3 request additional time to respond. *Id.*

4 Mr. Vicas took Mr. Moreno's deposition on November 30, 2023. *Id.* ¶ 5. During the
5 deposition, Mr. Moreno stated that because he was currently in restrictive housing, he did not have
6 access to documents responsive to Defendants' requests; nevertheless, Mr. Moreno brought
7 several documents to the deposition to which he referred throughout. *Id.* The parties verbally
8 agreed to move the dispositive-motion deadline in light of pending discovery. *Id.* ¶ 6. On
9 December 5, 2023, Mr. Vicas sent Mr. Moreno a letter, with a stipulation extend the dispositive
10 motion deadline attached, giving Mr. Moreno until January 2, 2024, to respond to discovery. *Id.* ¶
11 6, Ex. D. Mr. Moreno returned the signed stipulation, which was filed and approved by the Court
12 on December 19, 2023. Dkt. No. 19.

13 When no response from Mr. Moreno was received by January 2, 2024, Mr. Vicas sent a
14 second letter on January 10, 2024, giving Mr. Moreno an additional week to respond. Dkt. No.
15 20-1 ¶ 8, Ex. E. However, Mr. Moreno did not respond. *Id.* ¶ 9.

16 In the order of service, the Court stated that discovery may be taken in accordance with the
17 Federal Rules of Civil Procedure. Dkt. No. 7 at 7. Parties are entitled to obtain discovery
18 regarding non-privileged information that is relevant to any party's claim or defense and
19 proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). A party may move for an order
20 compelling answers to interrogatories or responses to requests for production of documents, along
21 with production of the requested documents, when an opposing party has failed to respond. Fed.
22 R. Civ. P. 37(a)(3)(B)(iii) & (iv). Parties must confer and attempt to resolve any disagreements
23 regarding discovery before seeking court intervention. *Id.*; N.D. Cal. Civ. L.R. 37-1.

24 According to Mr. Vicas's undisputed declaration, the parties conferred regarding discovery
25 on November 30, 2023, during Mr. Moreno's deposition. Dkt. No. 20-1 ¶¶ 5-6. Mr. Moreno did
26 not object to the discovery requests but merely explained that he had no access to his responsive
27 documents at that time. *Id.* ¶ 5. The parties verbally agreed to extend the discovery and
28 dispositive motion deadlines. *Id.* ¶ 6. Mr. Moreno signed and returned the stipulation that Mr.

Vicas subsequently sent to him, indicating that he had received the letter and notice regarding the extended deadline for discovery responses. *Id.* ¶ 7; Dkt. No. 18. Even after Mr. Vicas sent a second follow-up letter further extending the deadline to January 17, 2024 and notifying Mr. Moreno of defendants' intent to file a motion to compel if there was no response, Mr. Moreno filed no response. Dkt. No. 20-1 ¶ 8, Ex. E. Nor has Mr. Moreno filed an opposition to defendants' motion to compel, either denying the allegations or providing a justification for his failure to respond during the four months since being served with the discovery requests on October 27, 2023. Accordingly, the Court finds defendants' motion to compel discovery pursuant to Rule 37(a) should be granted.

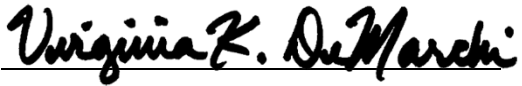
II. CONCLUSION

For the reasons discussed above, the Court grants defendants' motion to compel Mr. Moreno's discovery responses. Mr. Moreno must respond to defendants' interrogatories and requests for production of documents **by March 25, 2024**.

This order terminates Docket No. 20.

IT IS SO ORDERED.

Dated: March 4, 2024


VIRGINIA K. DEMARCHI
United States Magistrate Judge